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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/534,950	05/16/2005	Yasunobu Saito	Nisshin-2/RCE(FP254US)	1677
7265 7590 01/04/2011 MICHAELSON & ASSOCIATES P.O. BOX 8489 RED BANK, NJ 07701-8489				
EXAMINER				
O HERN, BRENT T				
ART UNIT		PAPER NUMBER		
1783				
MAIL DATE		DELIVERY MODE		
01/04/2011		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/534,950

Applicant(s)

SAITO ET AL.

Examiner

BRENT T. O'HERN

Art Unit

1783

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,5 and 7-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,5 and 7-9 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-942)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claims

1. Claims 1-2, 5 and 7-9 are pending.

WITHDRAWN REJECTIONS

2. All rejections of record in the Office action mailed 4/16/2010 have been withdrawn due to Applicant's amendments in the Papers filed 12/6/2010, 10/18/2010 and 9/13/2010.

NEW REJECTIONS

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 1-2, 5 and 7-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The phrase "with a viscosity greater than about 30,000 milliPascal-second at 20 degrees Celsius" in amended claim 1, lines 18-19 is new matter. The Specification as filed does not state that its formulation has a viscosity of greater than about 30,000 milliPascal-second at 20 degrees Celsius. The

Examiner acknowledges that Applicant discloses a viscosity ranging from 163,000 to 217,000 in Examples 1 and 2 at pages 39-41 of Applicant's Specification, however, these values are much above 30,000. The claimed range includes values of 31,000, 50,000, and 100,000 which are much below the viscosities for Applicant's invention. The claimed range also includes values of 250,000 and 300,000 which are well above the viscosities for Applicant's invention. If Applicant was granted a patent with the claimed viscosity then Applicant would have the right to exclude others from practicing an invention that is beyond the scope of Applicant's filed disclosure. Applicant's providing a broad generic open-ended definition of the viscosity of what is a semi-solid in the Specification does not provide support for all specific compositions, including those claimed, that may have a viscosity that is included within the very broad viscosity range.

ANSWERS TO APPLICANT'S ARGUMENTS

5. In response to Applicant's arguments (*See pp. 7-15 of Applicant's Paper filed 9/13/2010.*) regarding Oles, Qiang, Cain, Hamm and Chen, it is noted that said references are no longer cited, thus, said arguments are moot.
6. In response to SEKINE's declaration filed 9/13/2010 of the definition of semi-solid dressing per the Japanese Agricultural Standard, it is noted that said declaration has been reviewed and said declaration is effective in defining said terms.
7. In response to Applicant's arguments (*See pp. 7-15 of Applicant's Paper filed 9/13/2010.*) that the cited prior art does not teach the amended claims with the specified viscosity, it is noted that said amendments are effective in distinguishing the cited prior

art. All of Applicant's arguments have been considered. The cited prior art does not teach the claimed composition with the claimed viscosity as set forth in the amended claims.

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRENT T. O'HERN whose telephone number is (571)272-6385. The examiner can normally be reached on Monday-Thursday, 9:00-6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/BRENT T O'HERN/
Examiner, Art Unit 1783
December 31, 2010